IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3048 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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K G RAMNATHAN & 9 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
NOTICE SERVED for Applicant(s) : 1 - 10.
MR.SS PATEL APP for Respondent(s) : 1,
MR MB GANDHI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 05/03/2007

ORAL JUDGMENT

1. None present for the petitioners or for opponent No.2, who is the original complainant. The petitioners were, according to the petition, officers

of the company which was a well-known Government of India undertaking. They have been arrayed as Chairman, Directors and other high ranking officers of the Corporation and the allegations in the original complaint are to the effect that offences punishable under Sections 405, 406, 417, 418, 420, 426 read with Sections 34, 114 and 120B of the Indian Penal Code were committed by the accused persons in collusion with each other. The complaint was admittedly arisen out of a commercial transaction of contract between the original complainant and the Corporation managed by the accused persons.

2. According to the uncontroverted averments made in the petition, during the course of execution of work entrusted to the original complainant, the work was not found to be satisfactory even as, upon submission of periodical bills, payment to the extent of Rs.1,34,117/- was made between the period from 31.07.1994 to 01.07.1995. The complainant submitted 13 bills each of Rs.38,149.60 ps. and the Corporation made payment of six bills in proportion with the work found to have been executed. Upon demand for payment of the balance amount, a dispute arose and a joint survey committee was formed which included

representatives of both sides. Thereafter, the work was suspended for sometime and resumed after 22.01.1995. Since the work was not done according to the contract, further payment was withheld and the committee appointed to find out the truth found that a sum of Rs.37,522/- was paid in excess to the complainant. As against that, the complainant served a notice demanding a sum of Rs.5,88,103.45 ps. which included interest, value of the tools and tackles and security deposit etc. It is with this background that the allegations of cheating and breach of trust were made in the complaint by the complainant with the grievance that he was not allowed to get back tools and tackles. Learned Chief Judicial Magistrate, Baroda made an order on the said complaint to direct the Police Inspector, Gorva Police Station to carry out investigation under Section 156(3) of the Code of Criminal Procedure (for short the 'Code').

3. It is alleged in the petition that the complaint was filed with the sole purpose of pressurising the petitioners and avoid payment of Rs.37,522/- of which recovery was proposed to be made by the Corporation. Thus, in short, the petitioners have approached this Court with the plea that the complaint in question

was filed with an oblique purpose in a dispute of purely civil nature and without disclosing the essential ingredients of offences alleged against the petitioners. It is also stated that most of the petitioners have not been directly or indirectly concerned or connected with the contract from which the dispute had arisen and that the abuse of the process of court was writ large on the proceedings.

4. It appears from the record that, initially, while entertaining the petition, the original complainant, respondent No.2 herein, was called upon to remain personally present in the Court and, by order dated 22.07.1997, said respondent was permitted to enter the premises of the petitioners and take away his articles after making a list thereof. It also appears that thereafter the petition has remained unattended till today.

5. In the above background of facts and in absence of any counter affidavit, reply or representation by the original complainant, it appears that the petitioners were justified in approaching this Court and the trial court was not justified in ordering investigation under the provisions of Section 156(3)

of the Code. The complaint also reveals the transaction of contract and the dispute about the payment due and the articles withheld. After the aforesaid interim order, the articles appear to have been recovered by the original complainant and the dispute of civil nature appears to have been resolved. Therefore, the complaint of respondent No.2 and the proceeding in the trial court may not serve any useful purpose and may amount to abuse of the process of Court, particularly when the complainant has not cared to controvert any of the statements made in the petition or to pursue the matter before this Court. Therefore, the petition is allowed and the criminal complaint dated 21.04.1997 filed by the respondent No.2 in the Court of the learned Chief Judicial Magistrate, Vadodara as well as the order thereunder are quashed. Rule is made absolute with no order as to costs.

(D.H.WAGHELA, J.)

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